

Submission
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INQUIRY INTO 2022 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: Unions NSW

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**Parliamentary Review of the Workers
Compensation Scheme to Focus on the Increase in
Psychological Claims**

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Introduction

Unions NSW welcomes the opportunity to make a submission to the Legislative Council, Standing Committee on Law and Justice Parliamentary Review of the Workers Compensation Scheme to Focus on the increase in Psychological Claims.

Unions NSW supports the submissions of our affiliate unions.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 600 000 members. These unions represent a diverse range of workers from both blue and white- collar industries.

Unions NSW has long held concerns around the increase in work-related psychological injuries. This increase has been observed in all types of work. Psychological injuries are found in both blue and white-collar industries. These injuries do not discriminate, and any worker subjected to a hazardous workplace can fall victim. This increase is likely the result of an increase in certain workplace hazards with some hazards particularly prevalent during the Covid pandemic. A pandemic which is currently ripping through our society at a rate like never before. Understaffing resulting in role overload has been a problem for some time as companies seek to do more with less and channel profits to the few rather than the many, however currently it is a problem that has affected every industry as workers succumb to Covid, influenza and a number of other viruses. The health and aged care sector is crumbling under the weight of the pandemic and nurses, doctors and carers are at breaking point. Asking people to take precautions is not working. People are ignoring requests to wear masks on public transport and in crowded indoor venues. While the current virus is peaking during the winter months we would encourage enforcement of mask wearing in some high risk

situations to ease the burden on our healthcare workers.

Other hazards include exposure to traumatic events, occupational violence, poor organizational change consultation, lack of consultation, low job control, poor practical and emotional support, lack of job clarity, hazardous work environment, inadequate reward and recognition, high cognitive and emotional demands, poor working environment, isolated/remote work, lack of task variety, poor workplace relationships, bullying.

Unions NSW is not suggesting that these hazards will always lead to psychological injury. The work undertaken by some by its very nature involves some of these hazards. It is sometimes argued that being exposed to traumatic events is a part of some work and those who go into this work know this when they enter the work force. The assumption is these people are 'resilient' enough to cope. Policing is a good example. While most people understand the hazards and risks associated with policing, the real impact of vicarious trauma cannot be fully understood by the individual until exposure occurs. It is vital that such hazards are managed effectively and minimized where elimination is not possible. Workers exposed to these hazards must be provided with ongoing training, ongoing easy access to counseling, non-judgmental supervision, supportive supervision, both practical and emotional, good working conditions, strong supportive workplace relationships and good workplace cultures. Appropriate pay and good working conditions alone will not be enough to prevent psychological injury, but they are vital in assisting to help a worker feel valued and to help provide a good quality of life outside of work.

Unions NSW is also concerned about the rise in secondary psychological injuries arising out of the poor handling of primary injuries both physical and psychological entering the workers compensation system. Both primary and secondary psychological injuries have the potential to be life changing for those suffering from them. Some of these injured workers do not recover fully and

are not able to re-enter the workforce or maintain ongoing employment. This is counterproductive to one of the main objectives of the scheme which is to get injured workers back to work. We know return to work was a principal objective of the 2012 changes to the legislation however genuine return to work improvements are not reflected in the data. Unions NSW has always argued the scheme should focus on health and the return to pre-injury health where possible. Unfortunately the scheme continues to exacerbate some injuries or cause psychological injuries as it remains an adversarial system.

Mental Health

When discussing psychological injury, Unions NSW asserts that we are not referring to existing mental health conditions, but injuries sustained because of a workplace hazard. Mental health sits within a spectrum. Some days our mental health can be better than other days. Some of us (many in fact), may have mental health conditions. According to an Australian Bureau of Statistics study, 45% of Australians between the ages 16 and 85 will experience a mental health condition in their lifetime. The World Health Organisation (WHO), states neuropsychiatric disorders such as depression, alcohol-use disorders, bipolar disorder, depression account for 33% of the 'years live-with-disability' (YLD) among the population. More than 150 million persons suffer from depression at any point in time. Nearly 1 million persons worldwide commit suicide every year.¹

When we speak of the workplace as the cause of mental health injury, we are referring to the eggshell skull rule of law. The victim or injured worker must be treated as any person would regardless of any fragility that may exist. Put simply the workplace should do no harm. A worker should not suffer harm to their physical or mental health because of negligence within the workplace. When referring to 'mental health' Unions NSW uses the definition of the

¹ Tooma pages 3-4

World Health Organisation (WHO) as found on the Beyond Blue website stated below.

What is mental health?

It's an expression we use every day, so it might surprise you that the term 'mental health' is frequently misunderstood.

'Mental health' is often used as a substitute for mental health conditions – such as [depression](#), [anxiety](#) conditions, schizophrenia, and others.

According to the [World Health Organization](#), however, mental health is “a state of well-being in which every individual realises his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.”²

Unions NSW believes this definition is sometimes misunderstood by Person's Conducting a Business or Undertaking (PCBU) who have a statutory primary duty of care under s19 of the *Work Health and Safety Act 2011*. Because of this some businesses and organisations fail to acknowledge the role the workplace can play in assisting the well-being of its workers. Good work, work that is meaningful and satisfying, can help foster good mental well-being. In this submission Unions NSW will discuss in greater detail some of the hazards that need to be managed to avoid psychological injury and the role of the Regulator, SafeWork NSW, in policing safety in workplaces.

Prevention

The most effective way to reduce psychological injury and the workers compensation claim that may follow is to prevent the injury in the first place. The adage prevention is better than cure is very true. The Work Health and Safety Laws of this country operate primarily as preventative laws using a risk management process. The *Work Health and Safety Act 2011* defines 'health' as both physical

² <https://www.beyondblue.org.au/the-facts/what-is-mental-health>

and psychological. NSW now has its own Code of Practice to assist both workers and PCBU's in understanding their rights and obligations in preventing psychological injury using a risk management process. The Code of Practice, Managing Psychosocial Hazards at Work 2021, is a good tool to assist workplaces in better understanding the positive and negative effects work can have on mental well-being and what should be done to recognize and assess risks to eliminate or minimize risks. Unions NSW values the opportunity we had along with affiliate unions to contribute to this code of practice. It is vital that SafeWork NSW promotes the use of this code in all workplaces.

Unions NSW has expressed concerns over the decline in the regulation of workplaces in previous submissions to this Committee. We remain concerned. Prosecutions have declined since the 2012 legislation came into effect. Education has become the priority of SafeWork NSW. Education is an effective tool, but education alone will not always prevent a near miss from becoming a serious incident. Particularly where a PCBU is trying to cut costs and or cut corners. And in some cases keep unions and the Regulator out. The Australasian Meat Industry Employees Union NSW (AMIEU), and Unions NSW, made complaints to the Regulator in 2021 about reports of unsafe behaviour at an abattoir that was causing great anxiety among many workers. One worker was eventually dismissed after she made numerous complaints about unsafe practices. The union lodged an unfair dismissal for this member but no assistance was ever given by the Regulator despite the legal protections for whistleblowers within the Act. The union was unable to gain access to the workplace despite having all the relevant right of entry permits. The Regulator said they would undertake inspections of all abattoirs across NSW. The AMIEU suggested this was an unnecessary use of resources as they had good and transparent relationships with all other abattoirs across the State and were easily able to gain access to all except for the one in question. Proper access to inspect the abattoir was denied to the union by the PCBU when the union tried to inspect the safety concerns. The Regulator provided no

assistance to the AMIEU and the worker's safety concerns were left unchecked. As the negotiation between the AMIEU, Unions NSW and SafeWork NSW was unfolding and going nowhere, members at the abattoir were understandably anxious about both their safety and their job security. They had already witnessed one worker who spoke up about safety issues being dismissed. The message was clear. Do not complain about safety. The Regulator will not support you.

Unions NSW is aware of many complaints that have gone unchecked. Anecdotally we are told that workers at the SafeWork inquiry phone line have reported insufficient inspectors to go out to inspect worksites. Members of the public have complained to Unions NSW about complaints they have made about unsafe work practices in their neighbourhood going unchecked and being allowed to continue. For many years now Unions NSW has held concerns over the number of inspectors. We are informed that understaffing has been an issue for some time.

Throughout the pandemic, which continues, SafeWork NSW consistently pointed to other Government Departments as having responsibility. Unions struggled to get SafeWork to investigate or monitor safety when members complained about unsafe working conditions and possible exposure to Covid.

Workplace deaths are left to the police to investigate. This contradicts the object of the Act. Without an investigation by SafeWork NSW 3 (1) (g) providing a framework for continuous improvement and progressively higher standards of work health and safety cannot occur. SafeWork NSW must investigate workplace deaths to ensure every precaution is taking to prevent another workplace death from occurring.

In 2019 a nurse visiting a psychiatric patient in his home was brutally murdered by this patient. The close-knit profession was deeply traumatized by this. Only the police investigated this despite it being a workplace death. This has resulted in no changes occurring in the way in which psychiatric nurses carry out home visits. The patient

who was suffering a serious mental health condition was arrested but the health department's failure to provide a safe system of work was not questioned. Nurses continue this work not knowing what they will face each time they enter a patient's home and not having any additional safety measures in place.

Increasingly workers are becoming aware of SafeWork's failure to enforce the *Work Health and Safety Act 2012*. Workers have been left feeling unsupported and vulnerable to unsafe workplaces. This is also a failure to adhere to the object of the Act 3 (1) (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimization of risks arising from work or from specified types of substances or plant, and (b) providing for fair and effective representation, consultation, co-operation and issue resolution in relation to work health and safety, and 3 (1) (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures.

Secondary Psychological Injuries

The current scheme despite attempts to improve it still causes secondary psychological injuries to claimants with both physical and psychological injuries.

Personally, I have seen these injuries develop very early on in the process. Often the reason behind this is poor claims management, the adversarial nature of the system, including the independent medical examination (IME) process. Delays in accepting a diagnosis and delays in treatment which prolong pain and injury recovery and excessive surveillance. This is by no means an exhaustive list, but these are some of the most common issues that continue to plague the system, particularly early on in the claims process. The introduction of s39 has had a detrimental effect on injured worker wellbeing, with many injured workers living in poverty if their Whole Person Impairment (WPI) doesn't meet the threshold test.

Other problematic areas include the definition of Suitable Employment and Work Capacity Decisions. Injured worker weekly payments rely on Work Capacity Decisions and the definition of Suitable Employment and both are extremely flawed. The definition of suitable work itself acknowledges that the work may not exist and that the injured worker may have no experience in this work or capacity to gain this work and yet a worker's livelihood is dependent on this. This definition reads like a cruel joke.

Conclusion

These are just a small example of a system that is still causing harm. When a worker is injured at work they generally enter the workers compensation scheme with the belief that the scheme is there to help them. To help them recover. To help them return to good health and good work. This would usually mean the job they left when they were injured. And help them financially when they are unable to. Workers quickly discover this is not the case. The recently published McKell Institute Report, "It's Broken": Workers' Compensation in New South Wales Since 2012 paints a picture of a system that is littered with problems. Almost 80% of the injured worker's surveyed stated their experience had negatively affected their mental health and wellbeing as well as the mental health and wellbeing of their immediate family. 73% of those surveyed had experienced suicidal thoughts or ideations.

A system that creates this level of harm cannot achieve its objectives.

Unions NSW would welcome the opportunity to discuss this submission further at any opportunity.

